

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4798 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HAYATBIBI FATEHKHAN SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4798 of 1987
MR VC DESAI for Petitioners
Ms. Katha Gajjar for M/S PATEL ADVOCATES for Respondent No. 1
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/01/2000

ORAL JUDGEMENT

The petition was originally filed by the deceased petitioner under Article 226 read with Article 14 of the Constitution of India challenging the Government Resolution of Finance Department dated 1.1.1972 placed at

Annexure 'B' at page 11.

2. The deceased petitioner had contended in the petition that she was a widow of deceased Fatehkhani Sindhi who was serving as a Sub-Inspector of Ahmedabad City Police Station, who retired in the year 1948. She claimed that after the retirement of her husband, the deceased petitioner was getting pension as per the rules which were applicable to her case at the relevant point of time. She has also referred to a letter dated 24.3.1987 received from the Treasury Officer at Palanpur, Banaskantha to show her position as stated hereinabove.

3. The deceased petitioner next contended that her husband died after retirement on 13th December, 1963, That as per the revised pension Rules of 1950, the deceased petitioner was eligible for family pension for a period of 10 years. That the said pension rules were revised by Finance Department by Resolution dated 1.1.1972. That new family pension scheme was made applicable under the said Resolution w.e.f. 1.6.1971. That a specific condition was laid down in the said Resolution that the said scheme would be applicable to persons who were in service on 1.6.1971 or who were recruited thereafter. The terms and conditions for application of the said scheme were made clear in the said Resolution itself. That such scheme was made applicable in case of death of a Government servant while in service on or after 1.6.1971. Therefore, the said date i.e. 1.6.1971 was shown as cut-off date for the application of the said Resolution.

4. That the pension scheme envisaged that the said benefit will be extendable for a period of 10 years only. However, the petitioner further contended that this condition of limitation of 10 years has been later on deleted by Resolution dated 17.10.1977. That despite this position, the pensionary benefits have not been extended to the deceased petitioner.

5. That thereafter, the Government felt that the pensionary benefits were not satisfactory and adequate and, therefore, the said Resolution dated 1.1.1972-Annexure 'B' was issued extending the benefits to those who were in service on 1.6.1971.

6. The main grievance of the deceased petitioner was that the cut-off date of 1.6.1971 shown in the said Resolution for extending the pensionary benefits is arbitrary, discretionary and against the principles of natural justice and without any basis of nexus between

the said cut-off date and the aims and objects to be achieved by the said scheme. That in fact the said scheme was introduced to compensate eligible dependants of the Government servants who have put in qualifying service, in the case of their death leaving behind such eligible dependants. The deceased petitioner claims that in any case, the widows of the Government servants who expired on or after 1.6.1971 and of those Government servants who expired prior to the said date are not differently situated only by reason of the date of death of their husbands. She claims that this was purely arbitrary and malafide to give the liberalised family pension benefits to the dependants of the Government servants from an arbitrary retrospective date so that the benefits thereof accrues to the dependants of only such Government servants who were in service on a particular date and thereby can mould the policy of the Government to their benefit.

7. The deceased petitioner further contended that the widows or eligible dependants of Government servants form a separate and distinct class for the purpose of pension benefits and it is arbitrary and discriminatory to differentiate between them on the basis of the date of death or retirement of such Government servants i.e. treating the dependants of those Government servants who have died or retired prior to a particular date as forming one class of dependants of those Government servants who died or retired thereafter forming another class. The deceased petitioner further submitted that assuming that financial constraints may operate, liberalisation of the family pension scheme from time to time must be on the basis of its being applicable to all the eligible beneficiaries and not to a select or a limited class of such beneficiaries artificially made on the basis of fictitious cut-off date. That the number of such Government servants who have retired or died before the cut-off date leaving behind the dependants who are still eligible to get the family pension benefit cannot be a large one so as to operate any financial constraints on the Government. In fact it is the case of the petitioner that all those persons referred to above should have been treated equally and financial benefits should have been extended to all of them on equal basis.

8. The petitioner claims that she learnt about one decision of this Court holding that the cut-off date was not legal and, therefore, she was inclined to file this petition. She ultimately claims that the said cut-off date has not been properly fixed and in fact there could not be any cut-off date for application of the said

Resolution. She therefore prayed for appropriate writ, direction or oral order directing that the cut-off date i.e. 1.6.1971 prescribed in the impugned Government Resolution dated 1.6.1971 annexed at Annexure 'B' for implementing the liberalised family pension scheme only in respect of those Government servants who were in service on 1.6.1971 or recruited thereafter is unconstitutional and directing that the petitioner is entitled to claim the benefits flowing from the Resolution and the respondent be directed to compute the amount of pension and to pay arrears at the earliest.

9. On the strength of the said petition, after preliminary hearing, the petition was admitted and rule was issued returnable on 26.12.1988. Thereafter the matter has been adjourned from time to time. However, it seems that the respondent-State has not filed any affidavit to defend their case. Any way, I have heard Mr V C Desai, learned Advocate for the petitioner and Ms. Katha Gajjar, AGP for M/s Patel Associates. I have also perused the papers on record.

10. The facts cannot be disputed. The deceased petitioner was a widow of deceased Government employee who served the Government as Police Sub-Inspector and who retired from service in the year 1948. After his retirement, he was getting pensionary benefits and after his death the deceased petitioner was getting family pension. There cannot be any dispute about the said fact. Even the letter at Annexure 'A' dated 24.3.1987 addressed by the Treasury Officer, Palanpur to the deceased petitioner makes it clear that as per the records available in the treasury office at Palanpur, the deceased petitioner was earning family pension from the said Treasury. So this fact has been established by the said letter Annexure 'A' dated 24.3.1987. Therefore, in absence of any further material on record and in absence of any affidavit from the State Government, the said fact must be treated to have been established by the petitioner.

11. Another letter Annexure 'C' dated 1.10.1986 has also been addressed by the Accounts Officer from Finance Department and it says that the family pension scheme has been made applicable from 1972. It also says that it does not apply to the widows whose husbands retired before 1972. Therefore, those persons would not be eligible for the benefit of the said pension scheme. This also shows the trend of the Government.

12. During the course of the hearing, it was made

clear that the petitioner has died and thereafter her legal representatives have been joined as party to the litigation. This can be gathered from the papers of C.A. No.73/92, which show that the deceased petitioner-Hayatbibi expired on 24.4.1988 and that thereafter the legal representatives of the deceased petitioner have been substituted as parties for the deceased petitioner.

13. Another aspect of the case is that the present petitioner No.2-Munir Ahmed Ibrahimkhan was shown as minor aged about 15 years. However, it was made clear that he has become major and, therefore, the cause title of the petition has been properly amended showing him to a major petitioner.

14. During the course of hearing, learned Advocate for the petitioner has very vehemently contended that the widows of Government servants who might have died or retired before or after a particular date stand in one class and there cannot be different treatment to them on the ground that in one case the deceased Government employee died on a particular date and in another case he died on a later date. Such discrimination cannot be extended to the same class of persons. In support of the said arguments, learned Advocate for the petitioner has relied upon at least two decisions of this High Court.

15. First is Smt.Indumati A Patel v. State of Gujarat, 1987 (1) GLH 328. There the petitioner was a widow. Her husband had died on 29.12.1963 while in service as Deputy Secretary to the Government in Legal Department. The petitioner claimed benefit of Government Resolution dated 1.1.1972. It seems that for being entitled to pension beyond the period of 10 years, the widow of the employee was required to contribute two months' salary. However, this condition was subsequently deleted by Resolution dated 17.10.1977. Resolution dated 1.1.1972 has been made applicable to all regular employees on pensionable establishment, temporary or permanent, and who were in service on or after 1.6.1971. This particular part of the Resolution i.e. the cut-off date of 1.6.1971 was under challenge in the said petition. There it was contended that there is no rational basis whatsoever for making further classification of the dependants of pensioners by introducing criterion of employees "who were in service on or after 1st June, 1971". There the learned Advocate for the petitioner had relied upon a decision of the Hon'ble Supreme Court in Smt.Poonamale and others v. Union of India & Others, (1985) 3 SCC 345.

16. In the said case, the benefits were made available only to those who were in service as on 31.3.1979. There the Hon'ble Supreme Court observed as under:

"The words "who were in service on 31st March, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed."

17. So far as the second decision is concerned, in para 7 of the said judgment, the Supreme Court observed to the effect that the pension is a right and not a bounty or gratuitous payment. That the payment of pension does not depend upon discretion of the State Government but is governed by the relevant rules. Therefore, any one entitled to the pension under the Rules can claim it as a matter of right.

18. Then the Supreme Court further observed as under:

"Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise, inasmuch as it partakes character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate."

The said two decisions were taken into consideration by this Court in the aforesaid case of Indumati A Patel (supra) and this Court observed that the legal position is well settled that the pensioners constitute a class in themselves. No further classification can be made by introducing a criterion of "being in service" on a particular date and "retiring thereafter". Therefore, this Court observed that it is clear that the insertion of words "who were in service on or after 1st June, 1971"

is discriminatory. The Court further observed that this phrase introduces an invidious discrimination and creates two artificial classes of "dependents of pensioners who were in service on or after 1st June, 1971" and "dependents of pensioners who retired prior to June 1, 1971". This Court also observed that for creating such an artificial classification there is no reasonable nexus with the object to be achieved. It has also been observed that as laid down by the Supreme Court, pension, is a matter of right and the pensioner or his dependents can claim pension, not as a bounty or grace, but as a compensation for the service rendered by the employee. In view of the aforesaid position, this Court clearly held that the classification sought to be made by inserting the cut-off date June 1, 1971 has no rational nexus with the underlying object behind payment of pension.

19. On the aforesaid observation, this Court allowed the aforesaid petition and declared that the cut-off date namely June 1, 1971 prescribed in the Government Resolution dated January 1, 1972 produced at Annexure 'A' to the petition is illegal and void and is violative of Article 14 of the Constitution of India. The Court further directed that the petitioner shall be entitled to claim benefits flowing from the Resolution as if the words "who were in service on or after 1st June, 1971" were never there in the Resolution. This Court further directed the respondents to compute the amount of pension payable to the petitioner in the light of the principles laid down in the said judgment.

20. The said Resolution again underwent further judicial scrutiny in Kamlaben, Wd/o Govindlal v. State of Gujarat, 1989 (2) GLH 437. There also it has been observed by this Court that such a cut-off date divides the homogeneous class of widows and dependants of retired Government servants by introducing eligibility criteria of Government Servant being in service and retiring subsequent to the specified date is arbitrary and violative of Article 14 of the Constitution of India. It further says that no further justification for unequal and discriminatory treatment has been found in the said Resolution and the State Government cannot take up a stand which would violate salutary constitutional provision. After the detailed discussion on the subject and after considering the decision of D S Nakara (supra) and other decisions including the decision of Smt. Indumati Patel referred to above, this Court very clearly laid down that the Government cannot put up a cut-off date for introducing the said pensionary scheme.

It would be worthwhile to refer to para 20 of the said judgment which is as follows:

"Here what we find is-the State Government has taken retrogratory and unimaginative step. The object of the family pension scheme is to usher in socio-economic justice. However, the State Government, by taking up the stand, by which it has, denied socio-economic justice to the widows and dependants of Government servants, who retired or died prior to June 1, 1971 and the widows and dependants of Government servants who retired between June 1, 1971 and October 1, 1977 and who had not made the contribution. It may be that as a result of liberalisation of family pension scheme, the benefit of which, as held above, cannot be denied to the said widows and dependants financial burden may fall upon the State Government; but the financial resources of the State Government are not so inadequate as not to bear this burden. Hundreds of crores of rupees have been expended in making payment of arrears of pay and allowances to the Government servants with effect from January 1, 1986; and as compared to that large amount which has been expended, the amount which will become payable to the petitioners and widows and dependants of retired Government servants, whom they represent, would be very small. In any case, additional financial burden can hardly justify unequal or discriminatory treatment violative of Article 14 of the Constitution to such widows and dependants. The State Government cannot take up a stand, which would violate salutary constitutional provision."

On a construction of the said decision of the Apex Court, this Court again considered the aforesaid Resolution dated 1.1.1972 and ultimately laid down as follows in para 24:

"In the result, these petitions are allowed. It is declared that the words "who were in service on 1st June 1971 or are recruited thereafter" occurring in paragraph (1), the words "on or after 1st June 1971" and "and who has retired on or after 1st June 1971 and who has died or who may die on or after that date" in para (2) and clause (a) of para 12 of the Resolution dated January 1, 1972, referred to above, and the words "i.e. will be applicable to those who have

retired on 1st October 1977, and thereafter" in paragraph 3 of the Resolution dated October 17, 1977, referred to above, are arbitrary and violative of Article 14 of the Constitution of India, and they shall stand severed and deleted from the said two Resolutions. It is directed that the said two Resolutions shall be enforced and implemented after severance and deletion of the said unconstitutional part."

21. On the strength of the said findings and decisions, this Court directed the State Government to compute the amount of pension payable to the petitioners and such widows and dependants on the above basis and make payment of the arrears of pension on or before May 31, 1989. The State Government was further directed to pay to each of the petitioners and such widows and dependants of the retired Government servants and other persons referred to above, who were similarly situated, family pension from month to month regularly on or before 10th of every month with effect from April 1, 1989.

22. Therefore, it is the consistent trend of this Court that there cannot be different treatment to the dependants of Government servants in case the Government servant die before or after a particular date. Therefore, because the Government servant died before 1.6.1971 then, he has been given one treatment and simply because another Government servant died after 1.6.1971 he has been given different treatment. This cannot be legal and proper function of the Government. The Government cannot extend discriminatory treatment to those two persons who stand in one class.

23. On the aforesaid two decisions, it is very clear that the Resolution which is there on record at Annexure 'B' has undergone judicial scrutiny twice and on both the occasions, this Court consistently observed that the Government has extended discriminatory treatment between some group of persons and, therefore, the said condition of applying the said Resolution to a particular class of people have been struck down by this Court more than once.

24. The case of the present petitioner before me stands squarely covered by the said two decisions of this Court. It would not be necessary now for me to go into detailed discussion since the Resolution at annexure 'B' was the subject matter of earlier two decisions and it is the same subject matter of this petition also.

25. Learned AGP has contended that the Resolution makes it clear that it is prospective in effect and not retrospective one. However, this is the main ground on which the said Resolution has been struck down by this Court more than once. It may be that the State Government would be put to an additional expenditure. However, this cannot be the criterion when the Government introduces such schemes. If it is felt that there is an additional expenditure which may fall on the shoulders of the Government, then it should have been considered before introducing a particular scheme. If this has not been done, then now the Government cannot say that it will increase financial burden of the State. When the Resolution is otherwise discriminatory in its application, it would not be legalised on the aforesaid argument or it cannot be held to be legal on the said argument. Any way, I am of the clear decision that the present case fall within the four corners of the said two decisions and the very Resolution which is the subject matter in this petition at Annexure 'B' was the subject matter of the earlier two decisions and it has undergone judicial scrutiny twice and on both the occasions, this Court has strongly held that the cut-off date mentioned in the Resolution for its application is arbitrary and unconstitutional.

26. Now so far as the second decision is concerned, it is an outcome of two Special Civil Applications No.420 and 969 of 1988. It has been submitted that the decision in these two matters has been set at rest and no further LPA or SLP is pending against the said decision. In that view of the matter, when the decision arrived at in the aforesaid Special Civil Application of Kamalaben vs. State of Gujarat (supra) has been set at rest finally, there is no reason for me to differ from the view taken earlier in the said matter.

27. Therefore, I am also of the clear view that the cut-off date mentioned in the said Resolution at Annexure 'B' is illegal, discriminatory and against the provisions of Article 14 of the Constitution of India. Therefore, it is required to be struck down again.

28. Under these circumstances, the present petition succeeds and therefore, it is required to be allowed.

29. In the aforesaid view of the discussion and considering the aforesaid two decisions, the present petition is allowed and it is hereby held and directed that the cut-off date of 1.6.1971 prescribed in the impugned Government Resolution dated 1.1.1972 placed at

Annexure 'B' to this petition for implementing a liberalised family pension scheme only in respect of those Government servants "who were in service on 1.6.1971 or recruited thereafter" the said cut-off date is unconstitutional, illegal and discriminatory. It is directed that the deceased petitioner shall be entitled to claim benefit flowing from the Resolution Annexure 'B' as if the words "who were in service after 1.6.1971" were never there in the said Resolution. The respondents are directed to compute the amount of pension and to pay the arrears thereof to the present petitioners. The amount shall be calculated upto 24.4.1988 i.e. the date on which the deceased widow of the deceased Government employee died as per para 3 of Civil Application No.73/92.

30. The petition, therefore, succeeds to the aforesaid extent and it is allowed accordingly. The petitioner shall get cost of the petition from the respondent.

31. At the same time, when the aforesaid cut-off date has been found illegal, discriminatory and also unconstitutional by this Court for more than once, it is hoped that the State Government will carry out appropriate amendment in the said Resolution. With a view to place these observations before the Government, it is directed that copy of this judgment shall be sent to the Addl.Chief Secretary, Finance Department, Government of Gujarat, Gandhinagar for appropriate consideration in light of the observations made in this judgment as well as in the two decisions in *Indumati A Patel v State of Gujarat*, reported in 1987 (1) GLH 328 and *Kamalaben Wd/o Govindlal v. State of Gujarat* reported in 1989 (2) GLH 437.

Rule is made absolute accordingly.

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msp.